

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) 6:10-cr-60066-HO-1-2
)
STEVEN DWIGHT HAMMOND,)
DWIGHT LINCOLN HAMMOND, JR.,)
)
Defendants.)

TRANSCRIPT EXCERPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE MICHAEL R. HOGAN
UNITED STATES DISTRICT COURT JUDGE, AND A JURY
THURSDAY, JUNE 21, 2012
PENDLETON, OREGON
DAY 8 EVENING SESSION - VERDICT

-:-

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1 (Thursday, June 21, 2012; 9:24 p.m.)

2 (The jury is not present in the courtroom.)

3 P R O C E E D I N G S

4 THE COURT: We'll go on the record. Counsel, I
5 came into the courtroom not knowing all the lawyers
6 weren't here, but there's been nothing -- nothing
7 happened since I've been here.

8 I have a note from the jury. This is 9:04 p.m.
9 I think that was actually written by Ms. Wright. I
10 instruct her to keep times for the notes.

11 The note says, "Counts 1, 7, 8, we cannot come
12 to a unanimous decision. These counts are tied
13 together. We have discussed this for the last several
14 hours and can't agree."

15 Now, Mr. Baker, come here. I'm going to hand
16 this down so you can all look at it. I want you to talk
17 about it and tell me what your thoughts are.

18 I'll say we've gone on the record at 9:24.

19 (Discussion held off the record.)

20 MR. BLACKMAN: Your Honor, is the court -- let
21 me say, I'm exhausted and I don't think I've been
22 working as hard as the jury for the last six hours. I
23 would not want to have the jury asked to continue to
24 deliberate this evening, whatever. I just think they
25 may well be losing the kind of acuity that is essential

1 to deliberations.

2 Is the court willing to consider taking a
3 partial verdict tonight and sending them home and let --
4 see what happens?

5 The partial verdict might give us some
6 insight -- I don't know -- into whether it would make
7 sense to have them continue to deliberate or not. I
8 just don't think it's appropriate to have them stay past
9 9:30.

10 THE COURT: Well, there are two questions
11 involved in this. One is how long they work. And,
12 frankly, some of these people are from a very long ways
13 away. And I'm going to give them some discretion in
14 that. That's ordinarily what I would do. And ask them
15 if -- that's the question, whether they would like to
16 work more tonight.

17 There is a separate question there. Do we take
18 a partial verdict? Do the lawyers agree that a verdict
19 on these counts is enough for this case?

20 And on those questions, I probably will not do
21 something that the lawyers disagree about. Because I
22 think once a jury is out, we need to treat that as
23 precious in a sense. And if we agree that we will
24 accept a partial verdict or a verdict on certain counts,
25 that's fine and -- but I want agreement on that.

1 And with regard to the time, that's, to me, a
2 separate question. I've had verdicts (sic) who want to
3 work later when they've come from distances. And we
4 have one juror here who has driven 180 miles everyday
5 for this; and another one, 97; another one, 89; another
6 50, and lesser amounts. And I will give them some
7 discretion about that. They are here practically as
8 volunteers. And I think they get some say about that.
9 I know how to ask them about that. I can do it.

10 What I am more interested in -- of course,
11 we're all -- we've all put in a long week and a half.
12 What I'm more interested in is whether you want to take
13 what they have or not, or whether you want me to tell
14 them to keep working, what your agreement is there, if
15 you have an agreement.

16 MR. MATASAR: Your Honor, could I ask if the
17 government -- if the government would consider a partial
18 verdict, we will discuss it with our clients. I guess
19 that's probably the best way to proceed. If they would
20 not, then we don't have to have that difficult
21 discussion.

22 THE COURT: That's one way of proceeding. And
23 what I suggest in that regard is the lawyers go talk for
24 a minute or two.

25 MR. MATASAR: Okay.

1 THE COURT: To see whether -- without putting
2 yourself on the record and making public statements, you
3 have some ideas about that. All right?

4 MR. PAPAGNI: Has the court received the note
5 back?

6 THE COURT: I haven't received the note back.

7 MR. BLACKMAN: It's here on the ELMO. It's not
8 functioning as of now.

9 THE COURT: I'm sorry, I thought, Mr. Papagni,
10 it'd been given to you also.

11 MR. PAPAGNI: I have seen it for a second. I
12 just want to review it one more time. Thank you.

13 MR. MATASAR: Do you want to go into our
14 office?

15 MR. PAPAGNI: Sure.

16 THE COURT: I'll just wait here for you.

17 (Recess: 9:33 until 9:43 p.m.)

18 MR. PAPAGNI: Please the court --

19 THE COURT: Just a moment. I've done some
20 research on the law on this. If you want to hear it,
21 I'd be happy to give it to you. Then if you have some
22 thoughts, fine.

23 MR. PAPAGNI: All I can tell you is that the
24 parties cannot agree on whether a partial verdict is
25 appropriate.

1 The suggestion is that the court inquire if
2 they can continue deliberating or if they want to come
3 back tomorrow.

4 THE COURT: And do you have something to say?

5 MR. BLACKMAN: (Shaking head.)

6 THE COURT: All right. The situation is -- the
7 standard here is abuse of discretion. There was a case
8 last year in the Ninth Circuit where a partial verdict
9 was taken with less than two hours deliberation and
10 there was no indication the jury was deadlocked with
11 respect to anything.

12 There is a little earlier case that was cited
13 there that says the appropriate thing is to bring the
14 jury in for the court to question the presiding -- they
15 use the term foreman, but I use the term presiding
16 juror, as to their deliberations.

17 And this jury has been out six hours, according
18 to my notes. And so what I would intend to do at this
19 time is to bring them in, question them in that regard
20 with a few short questions, ask them to go back to the
21 jury room, and tell me whether they would like to
22 continue or come back another day, whether it's tomorrow
23 or Monday, and to tell me in the form of a note.

24 If they want to work tonight, I will tell them
25 that I would expect to try for at least a couple more

1 hours.

2 Now, I'd like to have your response,
3 reflections on that.

4 MR. MATASAR: Your Honor, I can only say that I
5 think we all would much prefer tomorrow to Monday.

6 Beyond that, I think we're -- I don't think
7 there is anything else for us to say. We're agreed.

8 MR. BLACKMAN: The case that you were referring
9 to, the court took a partial verdict and discharged the
10 jury, is that what happened?

11 THE COURT: Yes.

12 MR. BLACKMAN: I see.

13 THE COURT: And the case with less than two
14 hours and no indication the jury was deadlocked in
15 anything. The Court of Appeals, Judges Alarcón,
16 O'Scannlain, and Silverman, said that was abuse of
17 discretion.

18 A case from 1980, which they cited, where the
19 judges were Judge Peck, Anderson and Pregerson. Then --
20 that was not the result, but this is a case where the
21 judge brought the jurors in, they deliberated eight
22 hours and then asked them questions such as: Does it
23 appear that you would likely arrive at a verdict as to
24 any of the remaining counts in this case? And what do
25 you think the possibility is that your current deadlock

1 could be overcome by further deliberations?

2 MR. MATASAR: Well, we very much don't want a
3 partial verdict with the government's ability to retry
4 the case. So given their position, we would take the
5 next best alternative. We request -- would be to
6 continue deliberation and not take a partial verdict.

7 MR. BLACKMAN: After you've made appropriate
8 inquiries.

9 MR. MATASAR: After you've made appropriate
10 inquiries.

11 THE COURT: All right. Mr. Papagni?

12 MR. PAPAGNI: The court has suggested a course
13 of action that is acceptable to the government.

14 THE COURT: All right. Please seat the jury.

15 (Jury enters the courtroom at 9:50 p.m.)

16 THE COURT: Members of the jury, I have
17 received -- first, it's 9:50.

18 I've received your note which says, "Counts 1,
19 7, 8, we cannot come to an unanimous decision. These
20 counts are tied together. We've discussed this for the
21 last several hours and can't agree."

22 Now, there are some questions I need to ask
23 you, which I will ask through your presiding juror and
24 then decide what our next step is.

25 So who is the presiding juror, please.

1 JUROR SIX: (Indicating.)

2 THE COURT: Mr. M////////, you are the presiding
3 juror?

4 JUROR SIX: Yes, sir.

5 THE COURT: These are my questions for you: As
6 you evaluate the situation, sir, does it appear that you
7 would likely arrive at a verdict as to any of the
8 remaining counts?

9 JUROR SIX: No.

10 THE COURT: What do you think is the
11 possibility that your current deadlock on those counts
12 could be overcome by further deliberations?

13 JUROR SIX: No, it would not.

14 THE COURT: All right. Now, I'm going to need
15 to talk to the lawyers some, but I do have this for you.
16 If I decide that -- it's sort of a separate question.
17 We've all worked hard and I understand that. And some
18 of you are from a long ways away, and I want to honor
19 your feelings in this regard also. I'll have to make
20 the decision, but it's something I'm -- a question I'm
21 going to send you back with.

22 If I decide that you should work some
23 additional time on these remaining counts, I would like
24 your reflection on whether you would like to put some
25 additional time in this evening or whether it would be

1 tomorrow morning or Monday morning. And I'm not trying
2 to urge any of those. I'm just saying that those are
3 possibilities if I were to decide that you should work a
4 couple more hours on this or whatever time you feel is
5 appropriate.

6 In that regard, as I told you earlier, it's
7 important that you discuss the case with your fellow
8 jurors to reach agreement if you can do so. And I told
9 you on each of the questions your verdict must be
10 unanimous.

11 Each of you must decide the case for yourself,
12 but only after you've considered all the evidence and
13 discussed it fully with the other jurors and listened to
14 the views of your fellow jurors.

15 Don't be afraid to change your opinion if the
16 discussion persuades you that you should. But do not
17 come to a decision simply because the other jurors think
18 it is right.

19 It's important that you attempt to reach
20 unanimous verdicts but, of course, only if each of you
21 can do so after having made your own conscientious
22 decision.

23 Don't change an honest belief about the weight
24 and effect of the evidence simply to reach a verdict.

25 Now, what I'd like you to do, please -- and I

1 don't really have any other questions for you,
2 Mr. M////////, if -- unless you have anything short and
3 succinct that you would like to tell me about whether
4 you think further deliberations would be helpful.

5 I'm going to send you back to the jury room, at
6 any rate, to find out -- if I decide that you should
7 work longer, whether -- when that happens and whether it
8 happens. But is there anything else you can tell me,
9 not with a long speech, just in a few words about
10 whether you think further deliberations might be helpful
11 on the three counts which are identified?

12 JUROR SIX: No, sir.

13 THE COURT: All right. Thank you. I'll send
14 you back up to your home away from home. And we'll be
15 talking soon. All right. Thank you.

16 (Jury exits the courtroom at 9:56 p.m.)

17 THE COURT: Now, Counsel, another consideration
18 is this: This Ninth Circuit case I'm looking at does
19 say this, and perhaps this could be helpful, that a
20 trial court in its discretion may accept a partial
21 verdict and send the jury back for deliberation on the
22 remaining counts. Sort of the question of declaring a
23 mistrial on counts.

24 And the Ninth Circuit found that there is no
25 abuse of discretion in the District Court receiving a

1 partial verdict or, more accurately, in receiving a
2 complete verdict in separate segments.

3 So I'd like to have your input on that.
4 Whether you'd like to know what their verdict is on the
5 counts to which they've reached a verdict.

6 (Discussion held off the record.)

7 THE COURT: I might tell you, Counsel, that
8 I -- while I'm interested in your input, I think it's
9 probably a decision within my discretion, according to
10 the law, but I'd be happy to hear your thoughts, please.

11 MR. MATASAR: Your Honor, we're inclined to let
12 the court take the partial verdict.

13 THE COURT: Mr. Blackman?

14 MR. BLACKMAN: Yes, Your Honor.

15 THE COURT: Mr. Papagni?

16 MR. PAPAGNI: I'll defer to the court's
17 discretion.

18 THE COURT: All right. Please return -- ask
19 Ms. Wright to bring the jury back in with their verdict
20 forms.

21 (Jury enters the courtroom at 10:03 p.m.)

22 THE COURT: I'll bet you never thought you'd
23 get so much exercise being on a jury.

24 Mr. M////////, would you please give your verdict
25 forms to Ms. Wright.

1 I've decided that I may accept a partial
2 verdict in the case.

3 All right. Mr. M////////, on the verdict form
4 concerning Mr. Dwight Hammond, on count 3, I'm unsure
5 which space you are marking. I'd like you to re-mark
6 that so it's quite clear to me.

7 (Document tendered.)

8 THE COURT: Now, Counsel, ordinarily -- I'm
9 sorry, I'm still not sure. I would like you to circle
10 the answer that is your answer on that count, please.

11 (Document tendered.)

12 THE COURT: Thank you, sir. All right.
13 Counsel, ordinarily, I would ask the clerk to read
14 these, but in this case, given that it's kind of my
15 first time in almost 39 years I've had this situation, I
16 think I'll do it myself.

17 I'm looking at the verdict form for Mr. Dwight
18 Lincoln Hammond, Junior. And the counts for which we
19 have verdicts are as follows: Count 2, guilty.

20 Count 3, not guilty.

21 Count 4, not guilty.

22 Count 5, guilty.

23 Count 6, not guilty.

24 And on Mr. Steven Dwight Hammond the verdicts I
25 have are: Count 2, guilty.

1 Count 3, not guilty.

2 Count 4, not guilty.

3 Count 5, guilty.

4 Count 6, not guilty.

5 Now, members of the jury, I'm going to poll you
6 in that regard.

7 Ms. B///, are those your verdicts?

8 JUROR ONE: Yes, sir.

9 THE COURT: And Mr. J////////, are those your
10 verdicts?

11 JUROR TWO: Yes, sir.

12 THE COURT: And, Mr. M////////, are those your
13 verdicts?

14 JUROR THREE: Yes, sir.

15 THE COURT: And, Ms. C////////, are those your
16 verdicts?

17 JUROR FOUR: Yes, sir.

18 THE COURT: And, Mr. B////////, are those your
19 verdicts?

20 JUROR FIVE: Yes, sir.

21 THE COURT: And, Mr. M////////, are those your
22 verdicts?

23 JUROR SIX: Yes, sir.

24 THE COURT: And, Ms. G////////, are those your
25 verdicts?

1 JUROR SEVEN: Yes, sir.

2 THE COURT: And, Ms. W////, are those your
3 verdicts?

4 JUROR EIGHT: Yes.

5 THE COURT: And, Mr. D////////, are those your
6 verdicts?

7 JUROR NINE: Yes, sir.

8 THE COURT: And, Ms. G/////////, are those your
9 verdicts?

10 JUROR TEN: Yes, sir.

11 THE COURT: Thank you. And, Mr. C////////, are
12 those your verdicts?

13 JUROR ELEVEN: Yes, they are.

14 THE COURT: And, Mr. L////, are those your
15 verdicts?

16 JUROR TWELVE: Yes, sir.

17 THE COURT: Thank you. Now, members of the
18 jury, I may send -- I want you to go back, and for the
19 time being, continue working. And I will send you clean
20 verdict forms that only include the verdicts which -- or
21 the counts, not to the verdicts, the counts for which
22 you do not have a verdict. And I'll let you know my
23 decision about further deliberations as we go on. All
24 right. Thank you.

25 (Jury exits the courtroom at 10:10 p.m.)

1 THE COURT: All right. Counsel, from the
2 partial verdicts, they reveal that the jury has found
3 each defendant guilty on counts 2 and 5. And Mr. Dwight
4 Hammond not guilty on counts 3, 4, and 6. And
5 Mr. Steven Hammond not guilty on counts 3, 4, and 6.

6 All right. I'd like you to go talk to each
7 other again.

8 (Counsel exit the courtroom at 10:12 p.m.)

9 DEFENDANT STEVEN HAMMOND: Your Honor?

10 THE COURT: Just a moment. Do you want to go
11 talk to your lawyers? I'm sorry.

12 DEFENDANT STEVEN HAMMOND: Do I need to remain
13 seated? Can I converse here?

14 THE COURT: Can you talk to --

15 DEFENDANT STEVEN HAMMOND: Family.

16 THE COURT: Of course.

17 (Counsel enter the courtroom at 10:16 p.m.)

18 MR. PAPAGNI: Mr. Blackman, I was just going to
19 tell the court we're discussing matters. I think we'll
20 be a few moments, Judge.

21 THE COURT: That's fine. Take your time.

22 (Recess: 10:16 until 10:41 p.m.)

23 THE COURT: Please bring the other lawyers into
24 the courtroom.

25 MR. PAPAGNI: Judge, the partial verdicts that

1 you returned, I think there is some confusion as to what
2 counts apply to which defendant. I think that
3 clarification might be helpful for counsel.

4 THE COURT: All right. Let me give it to you.
5 Actually, I'll just -- please hand these verdict forms
6 to the lawyers to look at. Otherwise I'm getting ready
7 to take some action myself.

8 MR. BLACKMAN: Does the court have a copy of
9 the superseding indictment? I know I don't have my
10 copy.

11 THE COURT: Yes. In my trial book, there
12 should be.

13 MR. BLACKMAN: I'm sorry?

14 THE COURT: I'm just talking to Mr. Baker. We
15 had the original -- we gave one to the jury. I think
16 there is one in my trial book.

17 MR. PAPAGNI: I would probably like one, too.
18 Apparently, among my materials --

19 THE COURT: We've also researched that during
20 this time, too. A copy is being printed now.

21 MR. MATASAR: Your Honor, I'm not sure what the
22 government's inclination is now but I would think that
23 we might make more progress if we could have five
24 minutes in chambers or off the record. I'm not sure if
25 that's appropriate, if the government would allow that

1 or not. But we've been discussing a way to resolve this
2 matter. It's complicated. It's late. I just think
3 that might help us, but I don't know.

4 MR. PAPAGNI: Is the court willing to do that,
5 Your Honor?

6 THE COURT: I am.

7 MR. PAPAGNI: Then I am, too.

8 THE COURT: Are the defendants willing to waive
9 their presence there?

10 DEFENDANT STEVEN HAMMOND: Yes.

11 THE COURT: Mr. Blackman?

12 MR. BLACKMAN: Yes, Your Honor.

13 THE COURT: Please come to chambers.

14 (Recess: 10:45 until 10:57 p.m.)

15 THE COURT: Counsel, I'm uncomfortable with
16 this unless I bring the jury back and make sure.

17 MR. PAPAGNI: The situation, Judge, I think
18 that all counsel agree is that the Steven Hammond
19 verdict form appears proper, but Mr. Dwight Hammond's
20 form, they checked number 7, count 7, as being guilty,
21 but they did not check any of the ignitions. And,
22 therefore, in order for count 7 to be valid, they'd have
23 to check at least one ignition.

24 THE COURT: And it may have been count 5.

25 MR. PAPAGNI: That's what I'm thinking, but

1 count 5, unfortunately, he's not charged.

2 THE COURT: I'd like the verdict forms and I'd
3 like the jury back, please.

4 MR. MATASAR: Your Honor, did you hear we were
5 also saying that Dwight Hammond was not charged in
6 count 5?

7 THE COURT: I understand that.

8 MR. MATASAR: Okay.

9 MR. PAPAGNI: Have we made any progress on the
10 other matter?

11 MR. MATASAR: I'm not sure.

12 MR. PAPAGNI: Long night.

13 THE COURT: I see the problem. I see the
14 problem. All right.

15 MR. MATASAR: What?

16 THE COURT: I'll take care of it.

17 (Jury enters the courtroom at 11:00 p.m.)

18 THE COURT: All right. Mr. M////////, I have a
19 question about the verdict form. And I read it -- I
20 should have caught this earlier and did not. I
21 apologize.

22 In the Steven Dwight Hammond verdict form,
23 you've marked guilty on paragraph 2, which refers to
24 count 2. And you've marked guilty on paragraph 5, which
25 refers to count 5.

1 And with regard to those counts, are those the
2 only counts to which you unanimously determined that
3 Mr. Steven Hammond is guilty?

4 I can pass your verdict form back to you, if
5 you would like.

6 JUROR SIX: You are correct.

7 THE COURT: That's correct?

8 JUROR SIX: Yes, sir.

9 THE COURT: Okay. Now, as to Mr. Dwight
10 Lincoln Hammond, Junior, you've marked guilty as to
11 count 2 -- or paragraph 2, which refers to count 2. Is
12 that a correct verdict, according to your unanimous
13 verdict?

14 JUROR SIX: Guilty.

15 THE COURT: Thank you. And then you marked
16 guilty on paragraph 5, paragraph -- Mr. Dwight Hammond
17 is not charged in count 5.

18 JUROR SIX: No.

19 THE COURT: And this count refers to --
20 paragraph 5 refers to count 7. And to go on, in
21 count 6, you've marked not guilty.

22 JUROR SIX: That's correct, sir.

23 THE COURT: And -- but you crossed it out and
24 then put your initials.

25 JUROR SIX: That's correct. I got the forms

1 mixed up, sir, and I had it as Steven Hammond and not
2 Dwight.

3 THE COURT: Is your verdict not guilty on
4 paragraph 6, which refers to count 8, or were you trying
5 to mark out a verdict?

6 JUROR SIX: I believe that's not guilty for
7 Mr. Dwight, sir.

8 THE COURT: All right. And then with regard to
9 paragraph 5, you've referred -- you've marked guilty --
10 well, you've marked it out and then put your initials.

11 JUROR SIX: For Dwight Hammond, sir?

12 THE COURT: Yes.

13 JUROR SIX: Yes, sir.

14 THE COURT: And was your intention that that be
15 guilty?

16 JUROR SIX: No, sir.

17 THE COURT: All right. So I'm going to hand
18 this back to you. And you help me interpret it, okay,
19 on paragraph 5.

20 JUROR SIX: Would you like me to mark -- I
21 initialed where I made a mistake, sir.

22 THE COURT: Yes. I want you to your circle
23 your verdict on paragraph 5, if you have one.

24 JUROR SIX: Yes, sir.

25 THE COURT: All right. And which did you

1 circle?

2 JUROR SIX: Not guilty, sir.

3 THE COURT: All right. Thank you. If you'd
4 return that to me.

5 Now, jurors, I can go through you individually
6 again, is there anyone who has any lack of understanding
7 about what just happened? No?

8 So you have Mr. Dwight Hammond guilty as to one
9 count; and Mr. Steven Hammond guilty as to two counts;
10 and then you have some counts that you have not been
11 able to reach a verdict; is that correct?

12 (Jurors nodding.)

13 THE COURT: Now, is there anyone -- please
14 speak up if there is anyone who is -- that is not the
15 situation? All right.

16 Now, then, Mr. M'////////, I have one more
17 question for you. You've been -- since we were
18 together, you've been another hour and 20 minutes or a
19 little more together. Have you made any progress on any
20 of the other counts?

21 JUROR SIX: Yes, sir, we're attempting to.

22 THE COURT: And do you think some additional
23 time would assist you?

24 JUROR SIX: Yes, sir.

25 THE COURT: And how much time do you think you

1 would need? I know you can't tell for sure.

2 JUROR SIX: Hour, hour and a half, two.

3 THE COURT: Well, do -- you need to tell me
4 whether you think it would be helpful to take that or
5 whether -- I need to know from you whether you think
6 you're deadlocked or whether you think you are making
7 progress.

8 JUROR SIX: I believe we're making progress.

9 THE COURT: And would you rather continue
10 working now or would you rather come back another day?

11 JUROR SIX: No. Continue now.

12 THE COURT: All right. Thank you very much. I
13 appreciate it. Then head back to work.

14 If you get to the point you feel like you can't
15 make progress, please let me know. Thank you.

16 (Jury exits the courtroom at 11:07 p.m.)

17 MR. BLACKMAN: Your Honor?

18 THE COURT: What I -- first, from that
19 discussion, it appears the only count on Mr. Dwight
20 Hammond the jury has not reached a verdict is count 1.

21 And on Mr. Steven Hammond, it appears the
22 counts they have not reached a verdict is count 1, 7,
23 and 8.

24 So do you have any input for the court?

25 MR. BLACKMAN: Your Honor, I think we probably

1 need to confer with our clients again now that this
2 is --

3 THE COURT: Clearer?

4 MR. BLACKMAN: Clearer is not the word I would
5 use, but yes.

6 THE COURT: Clearer. All right.

7 (Recess: 11:08 until 11:22 p.m.)

8 THE COURT: Gentlemen, be seated.

9 MR. PAPAGNI: Your Honor, I believe we might
10 have reached an accommodation, if I can have
11 confirmation from defense counsel. I believe the
12 understanding would be -- if I may, gentlemen?

13 MR. MATASAR: Go ahead.

14 MR. PAPAGNI: My understanding is that Dwight
15 Hammond -- Dwight Lincoln Hammond, Junior, and Steven
16 Hammond have agreed that they would waive their appeal
17 rights and accept the verdicts as they've been returned
18 thus far by the jury.

19 The government will agree to run any sentences
20 that apply to Steven Hammond, recommend that they run
21 concurrent.

22 And would agree that they should remain
23 released pending the court's sentencing decision.

24 And the government does have only one
25 recommendation as an additional condition. The court,

1 of course, has discretion to impose. That they need to
2 waive any and all appellate rights and 2255 rights,
3 except for, of course, ineffective assistance of
4 counsel, which, quite frankly, in this case I think
5 would be real difficult to prove.

6 I think that's a summary of our understanding.

7 MR. MATASAR: Yes, Your Honor. Mr. Steven
8 Hammond has indicated after these discussions with the
9 government that we want this case to be over.

10 The idea is there will be no further
11 proceedings beyond this court and will be done with at
12 the sentencing. Mr. Steven Hammond has agreed to that.
13 He understands where we are.

14 THE COURT: All right. Mr. Hammond --

15 MR. MATASAR: He wants it to be over. He wants
16 this matter to be finished.

17 THE COURT: Mr. Hammond, do you agree to that?

18 DEFENDANT STEVEN HAMMOND: Yes.

19 THE COURT: Do you have any other questions of
20 your lawyer before I accept that?

21 DEFENDANT STEVEN HAMMOND: I accept that.

22 THE COURT: Is that a voluntary decision on
23 your part?

24 DEFENDANT STEVEN HAMMOND: Yeah.

25 THE COURT: Thank you.

1 Mr. Blackman?

2 MR. BLACKMAN: Yes, Your Honor. I've conferred
3 with Dwight Hammond. He is agreeable to waive his
4 appellate rights to bring this matter to a close.

5 And it's our understanding that this would be a
6 resolution of this case with the sentence the court
7 imposes. And the parties would accept the -- your
8 judgment as to the sentence that's imposed.

9 THE COURT: Mr. Dwight Hammond, is that your
10 agreement?

11 DEFENDANT DWIGHT HAMMOND: Yes, it is.

12 THE COURT: Is it a voluntary decision on your
13 part?

14 DEFENDANT DWIGHT HAMMOND: Yes, it is.

15 THE COURT: Do you have any questions of your
16 lawyer before -- or me before we accept that?

17 DEFENDANT DWIGHT HAMMOND: I guess not.

18 THE COURT: I accept the waivers.

19 The remaining counts are dismissed and -- the
20 ones for which we haven't had a verdict.

21 And I will notify you -- I don't have a deputy
22 clerk here. I'll notify you of a sentencing date. The
23 defendants will remain released on their own
24 recognizance and other conditions set by Pretrial
25 Services.

1 Now, Mr. Papagni, do you have something
2 further?

3 MR. PAPAGNI: I have two matters. I think the
4 court can deal with them summarily. I want to make sure
5 the Hammonds understand that under the statute the
6 government is obligated to recommend a five-year
7 mandatory minimum term of imprisonment.

8 I think your lawyer has told you that, but I
9 wanted the record to reflect that you gentlemen have
10 been so warned what the sentence is going to be that I'm
11 going to be asking for.

12 The second matter, as the court I think is
13 aware, that one of the conditions of release when a
14 person is convicted of a felony, as they have been, is
15 that I am obligated to request that they no longer have
16 or possess firearms. That's within the court's
17 discretion. I think the statute is clear in that
18 regard.

19 THE COURT: Thank you. I decline the latter.
20 There has been no indication of any abuse of firearms.
21 And I won't restrict them in that regard. Thank you.

22 The court is in recess.

23 (The proceedings were concluded at 11:26 p.m.)
24
25

1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 22nd day of June, 2012.

9
10
11 /s/ Deborah Wilhelm

12 -----
13 Deborah Wilhelm, RPR
14 Certified Shorthand Reporter
15 Certificate No. 00-0363
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